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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,602	12/30/2003	James T. Kenny	007086.00002	8670
22907	7590	09/15/2006	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			LAYNO, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,602

Applicant(s)

KENNY ET AL.

Examiner

Benjamin H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-10 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) 11-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-10 and 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's arguments, filed 07/17/06, with respect to the rejection(s) of claim(s) 1-8 under 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the newly cited references to Awada, Webb 916' and Scarne's Show Four Cards.

2. Newly submitted claims 11-19 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The "A system for playing a wagering game" recited in claims 11-19 is directed to an **apparatus**. This is distinct from the "**Method** of playing a wagering game" claims 1-10 and 20-29 because the various "means for providing...", the various "means for permitting...", etc. recited in claims 11-19 is broad. These broad apparatus recitations can be interpreted as wagering chips placed on a gaming table and playing cards dealt on the gaming table, or wagers placed in a slot of a video gaming machine and playing cards dealt on the screen of the video gaming machine. Any card game (five card draw poker, blackjack, Texas Hold'em, baccarat, etc.) can be played on the gaming table or on the video gaming machine (rules in apparatus claims have no limiting affect). Thus, apparatus claims 11-19 would require a more extensive search including class 463, subclasses 12, 13 and 16-28 covering all card games.

Since applicant has received an action on the merits for the originally presented invention "method of playing a wagering game", this invention has been constructively

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elected by original presentation for prosecution on the merits. Accordingly, claims 11-19 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-6, 8-10 and 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Awada in view of (Webb 916' and Scarne's Show Five Cards).

The patent to Awada discloses a method of playing a video poker game using a deck of 52 playing cards. A published ranking of winning hands and a predetermined pay scale for the winning hands are provided 23. To commence the game a player inserts an initial wager 14, col. 2, lines 60-61. **Four cards 19-22** are dealt to the player, and the player's four cards are compared to the predetermined pay scale. If the player's hand achieves a rank of at least as high as the first ranking from the published pay scale, e.g. two pair, the player receives a payout, col. 3, lines 6-11 and col. 4, lines 41-46. If the player hand fails to achieve at least the minimum ranking, e.g. two pair, the player's wager is taken.

The patent to Webb 916' discloses a method of playing a poker wagering game between a dealer and at least one player. **Webb teaches that it is known for a player**

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to place two separate wagers in a poker game, wherein a first wager is an “Ante wager” for playing against a dealer hand, and a second wager is a “Pair Plus” voluntary wager for playing against a predetermined pay scale, col. 2, lines 45-48.

Webb's game uses a standard deck of 52 playing cards. A published ranking of winning hands ranked from highest to lowest, along with a predetermined pay scale for winning hands is provided, col. 4, lines 45-55. A hand of cards is dealt to the dealer and a hand of cards is dealt to each player, col. 5, lines 9-14. The player's cards are compared to the dealer's cards. The dealer must achieve a predetermined qualifying minimum hand ranking of “queen high hand or better”, or the dealer loses after all cards are dealt, col. 5, lines 30-37. The game ends if the dealer fails to achieve a qualifying predetermined hand ranking “queen high hand or better”. If the dealer achieves the qualifying predetermined hand ranking, play proceeds, and the player places a third support wager “Play wager” in support of the first wager “Ante wager” against the dealer, col. 5, lines 17-24. The player's hand is compared to the dealer's hand to determine relative ranking, and if the player's hand outranks the dealer's hand, the player is paid even money on their “Ante wager”, col. 5, lines 41-49. If the player's hand achieves a rank at least as high as the first ranking from the published ranking, the player is paid according to the pay scale, col. 6, lines 1-5. If the player fails to achieve at least the minimum ranking from the published ranking, the dealer inherently takes the player's “Pair Plus wager”. If the dealer's hand outranks the player's hand, the player's first “Ante wager” and third support “Play wager” are taken by the dealer, furthermore, if the player's hand is the same as the dealer's hand, the player's first “Ante wager” and third support “Play

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wager” are returned to the player, col. 5, lines 45-49. Webb’s method of playing poker may be played on a **video gaming machine**, col. 8, lines 41-62.

Concerning claim 4, Webb discloses providing an additional side bet including an additional optional progressive wager for a six-card progression (which at least a five-card progression), a progressive jackpot bet. This progressive jackpot bet has a predetermined published ranking “ace to nine in the same suit”, col. 7, lines 37-51.

In view of Webb’s teaching above, it would have been obvious to modify the method of playing Awada’s video poker gaming machine by **incorporating a four card dealer hand** that Awada’s gaming machine would have randomly displayed, and incorporating an additional wager against the dealer hand. In Awada’s modified video poker gaming machine, the player would have placed an “**ante wager**” for playing against the dealer hand, would have voluntarily placed a second wager, “**Pair Plus wager**” for playing against the predetermined pay scale 23. A four card hand would have been dealt to the dealer and a four card hand would have been are dealt to the player. The player’s four-card hand would have been compared to the dealer’s four-card hand. The “Ante wager” and the “Pair Plus wager” would have been resolved according to Webb 916’ rules above. This modification would have provided the player with more wagering options to choose from, thus giving the player the perception having more strategic control over his/her wagers and therefore giving the player the perception of having a better chance at winning.

The poker game Show Five Card as disclosed in Scarne’s Encyclopedia of Games teaches that it is known in the poker game art to initially deal a plurality of cards

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(e.g. seven cards) which is greater than the number of cards to be used in determination of a poker rank, to each player. Then each player utilizing fewer than all the cards dealt to form a resulting player's hand for each player (e.g. **best** five card hand). Then resolving each player hand according to predetermined game rules.

In view of such teaching, it would have been obvious to modify Awada 916' poker game rules by initially dealing a plurality of cards (e.g. five cards) to the player and the dealer, which is greater than the four cards to be used in determination of a poker rank. Then the player would have utilized fewer than all the cards dealt to form a resulting player's hand for each player and a resulting dealer hand (e.g. **best** four card hand). The dealer (Awada's video gaming machine) would have selected the best four-card dealer hand. The resulting player's and the resulting dealer hand would have been resolved according to Webb's game rules above. This modification would have added more strategy and excitement to Awada's game by giving the player the opportunity to choose the **best four cards** from the five cards initially dealt, thus giving the perception of increased odds at winning.

Determining exactly how many cards to initially deal to each player and the dealer (e.g. five cards, six cards, seven cards, etc.), and determining exactly the resulting number of cards fewer than the initial number of cards dealt (e.g. four cards, five cards, etc.) is simply a casino business decision based on the amount of profit the casino wishes to collect.

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5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Awada in view of (Webb 916' and Scarne's Show Five Cards" as applied to claim 1 above, and further in view of Scott et al.


The patent to Scott et al. teaches that it is known to provide a bad beat wager in a poker wagering game, in case the player's hand is outranked by the dealer's hand. Scott et al. also includes a published ranking of winning bad beat hands, col. 6, line 54 to col. 7, line 19. In view of such teaching, it would have been obvious to incorporate a bad beat wager and bad beat published ranking to Awada's game. This modification would have given losing player another chance at receiving a payout, thus making Awada's game more attractive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Benjamin H. Layno
Primary Examiner
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bhl